

IN

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

2019 APR -8 AM 11:13
DEBORAH A. MYERS
CLERK OF COURTS
ASHLAND, OHIO

STEPHANIE SIKORA, et al.,

Plaintiffs,

vs.

ASHLAND UNIVERSITY,

Defendant.

Case No. 17-CIV-006

JUDGE RONALD P. FORSTHOEFEL

**PLAINTIFFS' FINAL PRETRIAL
STATEMENT**

Now comes Plaintiffs, by and through counsel, and submits the following Pretrial Statement:

I. Prior Settlement Negotiations

As indicated in the Defendant's Pretrial Statement, the parties have undergone extensive settlement negotiations. Prior to discovery, the parties invested months of time in a private mediation process that did not result in an agreed resolution. After significant discovery, the parties participated in mediation with the Court's mediator on July 26, 2018. There have not been additional settlement discussions after the summary judgment determination.

II. Factual Background

Each Plaintiff was a long-term tenured faculty member who was terminated without cause. There is no dispute that each of the Plaintiffs had attained tenure at Ashland University through the rigorous academic tenure process in place at Ashland University. Further, each of the Plaintiffs was under contract with the University for their tenured professorship at the

University. This contract clearly and unambiguously incorporates the Faculty Rules and Regulations of the University into the terms of the employment contract.

Under the Faculty Rules and Regulations, a tenured professor can be terminated without cause by the University under only three circumstances: (1) financial exigency, (2) the formal discontinuance of a program or department of instruction not mandated by financial exigency, or (3) the formal restructuring of a program or department of instruction not mandated by financial exigency.

Tenure is referred to in the Faculty Rules and Regulations Definitions: “Tenured Faculty Member: Those faculty members holding appointments with continuous tenure, and those on probationary appointments who have been granted tenure effective at the beginning of the next contract period.”

There is no dispute in this case that the Plaintiffs were terminated without cause. There is no dispute that the University was not in financial exigency, nor does the University claim that there was a discontinuance of a program or department. The University claims that there was a formal restructuring of a program or department as the basis of the termination of the Plaintiffs. The Plaintiffs dispute this claim.

The Plaintiffs will show there was no formal restructuring that has any causal connection to termination or non-renewal of Plaintiffs’ employment and their respective programs or departments. The University did have a need or desire to reduce its expenditures on personnel costs by \$3,000,000. The University’s answer was to invoke the “formal restructuring of a program or department” provision of Article XII and dress up the termination of tenured faculty as a “formal restructuring” in order to do what the University was not permitted to do under the

contract.

On August 5, 2015, the Administration went to the Board of Trustees and presented a recommendation that “resources need to be reallocated to fund the institutional strategic priorities.” (Minutes attributing statement to President Campo, Board of Trustee Meeting August 5, 2015). According to the minutes, the Administration then went on to discuss financial issues including future budget needs and goals. The Administration specifically noted according to the minutes: “Reducing personnel expenses and reallocating \$3 million in resources will provide the financial support to:

- Address student safety concerns in campus security and athletics
- Invest in personnel through improved wages and benefits
- Increase resources for marketing, advertising and recruiting
- Keep costs for students as low as possible
- Maintain commitment to academic quality
- Position institutional advancement for a future capital campaign
- Provide resources for academic support and the library
- Successfully launch the College of Online and Adult Studies

The academic restructuring and subsequent budget model requires a 15% reduction of faculty personnel expenses which will result in faculty non-renewals, including tenured faculty.”

The University achieved this cost savings through the termination of tenured faculty and the use of cheaper labor. The University not only breached its contract to the Plaintiffs by erroneously invoking Art. XII.B.1 bullet point 3, the formal restructuring of a program or department, they continued their breach by not applying the factors required in Art. XII.D.

“Priorities in Faculty Reduction”. Each of the Plaintiffs outlined specifically how the Administration failed on this front in each of his or her Appeal Documents:

At the level of the adjudicative body tasked with hearing the evidence and making a determination of how that evidence applies to the Rules and Regulations, each of the Plaintiffs won their appeal on almost all of the grounds listed in their Appeal Documents. The Senate Faculty committee tasked with hearing the appeal was the Professional Standards and Responsibilities Committee (PSRC). The PSRC agreed almost completely with the Plaintiffs and found no formal restructuring of a department or program occurred and thus there was no allowable basis for each of the terminations.

The University was bound by the same contract to minimize the impact on full time tenured faculty. As such, once it decided to reduce faculty (and Plaintiffs dispute the validity of this decision), the administration was required by Article XII.D.2 to take specific steps listed in the Rule to minimize the impact on the Plaintiffs. The University was required to use normal means of attrition. Rule XII.D.2.a. The University failed to do so. Instead, the University ignored its obligation to reduce tenured faculty by attrition; hired and continued to employ cheaper adjuncts to replace the tenure faculty; and chose non-tenured faculty to keep on staff over the tenured faculty. In one instance, the University even hired back one of the Plaintiffs as an adjunct to do his same job at a cheaper rate.

Additionally, the University failed to follow the prescribed procedure for faculty reductions as required by XII.C. The University did so in form only, but once the surface is scratched, the Plaintiffs will show that in substance the procedures were not followed.

Finally in XII.D.2.d, the final criteria is that if a termination must be made between

tenured faculty members (and Plaintiffs disputes that this was necessary), the administration was required to make its decision based on a list of factors in this Rule. The University did not utilize the list of criteria as required. The University failed to weigh all of the factors listed in Art. XII.D2.d and thus selected the Plaintiffs for termination when if the listed factors had been considered such as seniority, teaching excellence, and service to the university, the less senior faculty would have been selected.

Finally, the University was required to Relocate the Tenured Faculty before it issued notices of its intent to terminate. The University was required to make a good faith effort to do so and even offer training if needed. Art. XII.E. The University played lip service to this requirement, but otherwise failed to meet its requirements. The Plaintiffs went through great efforts to aid in this process. The University continued to employ adjunct professors to teach courses the terminated professors could teach and offered courses the terminated professors could teach as supplemental courses to the retained instructors. The Plaintiffs could have taught in other departments or been assigned to administrative roles, but no effort was made to place the Plaintiffs in continued employment at the University.

While the University refers to“academic restructuring” there is no connection between the terminations to any actual restructuring. To the contrary in the very presentation to the Board, the administration is asking to reduce the number of tenured faculty in order to use those funds for the following:

- Address student safety concerns in campus security and athletics
- Invest in personnel through improved wages and benefits
- Increase resources for marketing, advertising and recruiting

- Keep costs for students as low as possible
- Maintain commitment to academic quality
- Position institutional advancement for a future capital campaign
- Provide resources for academic support and the library
- Successfully launch the College of Online and Adult Studies

None of these areas have anything to do with academic restructuring of any kind, let alone the restructuring of the specific department and program which the Plaintiffs were members of.

The Faculty Rules and Regulations do not define the term “formal restructuring” or “restructuring”. However, all parties agreed that the Plaintiffs had a right to appeal the decision of the Board to non-renew and that the appropriate body to hear and determine the appeal was the Professional Standards and Responsibilities Committee of the Faculty Senate (PSRC). (“As the ‘appropriate faculty committee’ specified in Ashland University’s FRR, PSRC is charged with adjudicating this appeal.”) As a part of this adjudication, PSRC found that “While FRR does not prescribe a specific form that a restructuring process would take, the clear implication is that restructuring would involve a meaningful and significant change to the academic offerings of the instructional programs in which [Dr. Tiel] teaches--indeed, by definition, a *restructuring* of any of these programs would cause that program to take a new or different structure than it presently has.” (each of the appeal findings contain similar language as it relates to each Plaintiff).

According to this definition of restructuring, there must be some visible significant change to the academic offering that directly relates to the employment of the terminated tenured professor. None of that happened at Ashland University. Instead, class sizes grew, the

professors that remained (often less senior professors and those without the strongest background to teach that particular course) taught additional courses; inexpensive adjuncts were hired to teach courses and other simple cost saving measures were put in place. None of the reasons listed in the August 5, 2015 Board minutes above constitute a restructuring of the academic programs and departments that the Plaintiffs were members of.

The University's claim that it restructured in accordance with Art. XII relies completely on the premise that the Academic Prioritization process was integral to the "restructuring." However, the evidence will show that the two processes were not causally connected.

The administration asked the Board of Directors of the University to sign off on this plan to reallocate money to areas like student safety and marketing and recruiting by naming it a restructuring. Without objection, the Board agreed. Then when faced with the requirement under the contract to review the appeal brought by each of the Plaintiffs, the Board put together an ad hoc committee made up of a core group of loyalists to this termination process who understood the importance of the University's agenda to reallocate \$3 million and call it a "formal restructuring." There was no surprise when the Ad Hoc Committee who was comprised of the very people who made the decision to name this process a "formal restructuring" and permit the administration the authority to terminate tenured professors simply adopted their own original decision to allow this process to proceed. In other words, the same people who originated the process to terminate, reviewed their own decision and determined that they were right.

The only independent group to review this process was the Professional Standards and Responsibilities Committee of the Faculty Senate. This is the body who was designated, by the

Contract through the Faculty Rules and Regulations, to receive the appeal, hold hearings, review written submissions by both the terminated professor and the University, investigate, and make a determination on the merits of the appeal.

This body found unanimously in favor of the Plaintiffs and recommended to the Board that they overturn their initial decision to terminate the tenured professors because the action was in violation of the contracts.

The Board rejected this detailed and thorough report and analysis with almost no comment or explanation other than a rote recitation of the administration's initial position that this reallocation of \$3 million was part of the "formal restructuring". At this March, 2016 Board meeting, the Board unanimously voted for the finding that the University acted in accordance with the Faculty Rules and Regulations and affirms the actions of the Administration and denies each faculty member's appeal." The motion carried unanimously, no discussion or objections were noted in the minutes.

This decision was communicated to the Plaintiffs in a two paragraph letter from President Campo on March 22, 2016.

The University took minimal steps to re-employ the Plaintiffs. Under Article XII. E. the University was required to relocate the non-renewed or terminated tenured Plaintiffs. The University made only nominal attempts to relocate. The University's stated purpose of the non-renewal was to reallocate the \$3 million. As such, it was necessary to make sure that the expense of employing these individuals was off of the books to free up the \$3 million. If the Plaintiffs were relocated, that would defeat the purpose of the "restructure" in order to non-renew plan.

III. Issues To Be Resolved At Trial

1. Whether Ashland University breached its Tenured Employment Contract with the Plaintiffs when it terminated the Plaintiffs employment?
 - a. Whether the University breached the contract by deciding to terminate without a basis under Article XII.B of the 2014-2015 Faculty Rules and Regulations?
 - b. Whether the University breached the contract by failing to follow Article XII.C of the 2014-2015 Faculty Rules and Regulations?
 - c. Whether the University breached its contract by failing to apply the priorities as required by Article XII.D of the 2014-2015 Faculty Rules and Regulations?
 - d. Whether the University breached its contract by failing to relocate the plaintiffs under Article XII.E of the 2014-2015 Faculty Rules and Regulations?
 - e. Whether the University breached its contract by failing to give effect to the appeal process as required by Article XII.G of the 2014-2015 Faculty Rules and Regulations?
 - f. Whether the University breached the employment contract by stripping the Plaintiffs of their property right as incorporated by Article XV of the 2014-2015 Faculty Rules and Regulations?
2. If so, what are the damages incurred by each of the Plaintiffs as a result of the breach?

IV. Applicable Law and Authorities

When a University incorporates the rules and regulations of that University into an employment contract, the University is contractually required to follow those rules. *Chan v. Miami Univ.*, 73 Ohio St.3d 52, 1995-Ohio-226, 652 N.E.2d 644 (1995) (“Chan's employment contract, composed of letters of appointments that incorporate the university's manual and resolutions adopted by the board of trustees, is expressly written and is therefore properly interpreted as a matter of law by the court. Citing *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, 7 O.O.3d 403, 374 N.E.2d 146, paragraph one of the syllabus.) As such, the tenured employment contracts between Ashland University and each of the Plaintiffs

incorporated the Faculty Rules and Regulations.

The University asserts in its Pre-trial Statement that the law suggests that the University should be granted broad discretion to interpret its own Rules and Regulations. They may be the case generally, but for the provisions that are incorporated into an enforceable contract, in the case, an employment contract, normative rules of contract construction must apply. If the University is allowed broad discretion as to what the terms of the contract mean at any given time, the contract terms would be illusory and thus unenforceable. What is clear here, is that both parties to the employment contract intended to be legally bound by an enforceable agreement. As such, the Court should apply the rules of contract construction and read each provision as an enforceable term where possible.

The court is “ bound by the consistent rule of law that ‘an instrument must be considered and construed as a whole, taking it by the four corners as it were, and giving effect to every part; but when one part is certain on a given subject, and all the other parts are uncertain on that subject, the certain will prevail over the uncertain[.]’ *Brown v. Fowler* (1902), 65 Ohio St. 507, 523, 63 N.E. 76, 78.” *Chan*, 73 Ohio St.3d 52. As the Court reviews the contractual terms, and at is heart this dispute comes down to whether there was a “formal restructuring of a program or department” and what those terms mean, the Court must “give effect to every part”. Thus, when the University repeatedly brushes past the modifying clause: “of a program or department,” it is up to the Court to apply the law as described here and ensure that this modifying clause, indeed is given meaning.

Here, the University and the Plaintiffs entered into a contract for tenured employment each year. The Tenure Faculty Contract incorporates the Faculty Rules and Regulations. The

University is bound by the obligations in Article XII as well as the concept of Tenure that is incorporated into the Rules and Regulations in Article XV. Courts have described the legal implications of an employment contract including tenure in the following way:

“There is no dispute that the granting of tenure creates an expectation of continued employment subject to discharge for cause. The United States Supreme Court stated in *Perry v. Sindermann* (1972), 408 U.S. 593, 601, 92 S.Ct. 2694, 2699, 33 L.Ed.2d 570, 580, that “[a] written contract with an explicit tenure provision clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless ‘sufficient cause’ is shown.” Tenure has the status of a property right and may be revoked only pursuant to constitutionally adequate procedures defined by the right itself. *Cleveland Bd. of Edn. v. Loudermill* (1985), 470 U.S. 532, 538–541, 105 S.Ct. 1487, 1491–1493, 84 L.Ed.2d 494, 501–503; *Perry, supra.*”

Chan, 73 Ohio St.3d 52, 1995-Ohio-226, 652 N.E.2d 644 (1995).

This written contract that explicitly provides for tenure supports the professors’ claims of entitlement to continued employment unless ‘sufficient cause’ is shown. The Plaintiffs contracted for this property right and the University had a duty to continue the employment unless they specifically followed the procedures available to them under the Faculty Rules and Regulations.

When a term in a contract is undefined, it is given its “plain and ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly intended from the face or overall contents of the instrument.” *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 245–46, 374 N.E.2d 146 (1978), citing *First Natl. Bank v. Houtzer*, 96 Ohio St. 404, 406–407, 117 N.E. 383 (1917) When an undefined term has a plain and ordinary meaning, it is “unnecessary and impermissible for a court to resort to construction of that language.” *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E.2d 684

(1995), citing *Karabin v. State Auto. Mut. Ins. Co.*, 10 Ohio St.3d 163, 166–167, 462 N.E.2d 403 (1984) However, “[w]hen interpreting a contract, we will presume that words are used for a specific purpose and will avoid interpretations that render portions meaningless or unnecessary.” *Wohl v. Swinney*, 118 Ohio St.3d 277, 2008-Ohio-2334, 888 N.E.2d 1062, ¶ 22, citing *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, ¶ 50. *Eighth Floor Promotions, L.L.C. v. Cincinnati Ins. Cos.*, 3rd Dist. No. 10-15-19, 2016-Ohio-7259, 71 N.E.3d 1262, ¶ 25.

“To restructure is defined by Webster's Dictionary as “to change the makeup, organization, or pattern of.” *Modern Real Estate Invest. v. McIntyre, Kahn & Kruse*, 8th Dist. Cuyahoga No. 95870, 2011-Ohio-3471, ¶ 21, cause dismissed, 130 Ohio St.3d 1483, 2011-Ohio-6237, 958 N.E.2d 175, ¶ 21 (2011).

Ohio courts frequently consult Black's to interpret statutory terms. *See State of Ohio ex rel. Turner v. Eberlin*, 117 Ohio St.3d 381, 384, 884 N.E.2d 39 (2009) (“We have often applied definitions from Black's Law Dictionary to determine the meaning of undefined statutory language.”). Accordingly, Black's Law Dictionary defines Restructuring as follows: A fundamental and sometimes drastic change that will alter the relationships within a company or with other companies. Black's Law Dictionary, www.thelawdictionary.com, Black's Law Dictionary online edition, 2nd Ed. “Restructuring.”

In applying the language of the contractual terms, we must apply the most basic axiomatic rules of contract construction. Where a contract is susceptible to different interpretations, the court will adopt the one which will give it validity, if it is reasonable, rather than one which renders it illusory. *J. C. Millett Co. v. Distillers Distributing Corp.*, 9 Cir., 1958, 258 F.2d 139. *Cordovan Assoc., Inc. v. Dayton Rubber Co.*, 290 F.2d 858, 861 (6th Cir.1961).

Ohio courts have continuously and repeatedly adopted and applied this black letter law articulated from the early days of our democracy through the present time.

“Specifically, a court should give effect to every provision contained within a contract unless **to do so results in absurdity. *** Additionally, if one construction of a questioned provision would make that provision meaningless, and it is possible to give it another construction that would give it meaning and purpose, then the latter construction must prevail.” *Farmers' Natl. Bank v. Delaware Ins. Co.* (1911), 83 Ohio St. 309, 94 N.E. 834, paragraph six of the syllabus.” *Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Edn.*, 10th Dist. No. 05AP-1098, 168 Ohio App.3d 592, 2006-Ohio-4779, 861 N.E.2d 163, ¶ 22. See also: *Kebe v. Nutro Machinery Corp.* (1985), 30 Ohio App.3d 175, 177, 30 OBR 316, 507 N.E.2d 369 (“When ‘construing an agreement, the court should prefer a meaning which gives it vitality rather than a meaning which renders its performance illegal or impossible.’)

Generally, courts disfavor contract interpretations which render contracts illusory or unenforceable. *Harasyn v. Normandy Metals, Inc.* (July 28, 1988), Cuyahoga App. No. 53212, 1988 WL 86966, [reversed on other grounds, 49 Ohio St.3d 173, 551 N.E.2d 962,] quoting *Liqui*Lawn Corp. v. The Andersons* (April 10, 1986), Cuyahoga App. No. 50240, 1986 WL 4394.” *Talbert v. Continental Cas. Co.*, 157 Ohio App.3d 469, 2004-Ohio-2608, 811 N.E.2d 1169, at ¶ 9. *Buckeye Ranch, Inc. v. Northfield Ins. Co.*, 134 Ohio Misc.2d 10, 2005-Ohio-5316, 839 N.E.2d 94, ¶ 41 (Ohio Com.Pl.)

A contract is illusory only when by its terms the promisor retains an unlimited right to determine the nature or extent of his performance; the unlimited right, in effect, destroys his promise and thus makes it merely illusory. 1 Williston on Contracts (3 Ed. 1957) 140, Section

43.” *Century 21 Am. Landmark, Inc. v. McIntyre*, 68 Ohio App.2d 126, 129–30, 427 N.E.2d 534, 536–37 (1st Dist.1980).

“The concept of mutuality of obligation expresses the idea that both parties to the contract must be bound or neither is bound.” (Internal quotations omitted.) *Helle v. Landmark, Inc.* (1984), 15 Ohio App.3d 1, 12, 472 N.E.2d 765.” *MEP of Ohio, Inc. v. Lamkin*, 9th Dist. Summit No. 23862, 2008-Ohio-1459, ¶ 5. Thus, if a term of the Tenure Faculty Contract is interpreted to allow the University unfettered discretion in invoking Art XII at any and all times because there are always structural changes occurring or because the University claims it has broad discretion to interpret and implement its Rules as it sees fit, then this provision is a meaningless promise. The concept of binding the parties to a mutual obligation of constraint would be gone. A contractual term binds oneself to some constraint.

V. Witnesses

Plaintiffs expect to call the following individuals at trial:

1. Dr. William Cummins. Plaintiff. May be contacted through counsel. Dr. Cummins will testify to the circumstances surrounding his employment, the department and program in which he worked, the termination, the appeal, his efforts to be relocated, the role of the Professional Standards and Responsibilities Committee, and the damages he experienced as a result of the termination.
2. Dr. Boris Kerkez. Plaintiff. May be contacted through counsel. Dr. Kerkez will testify to the circumstances surrounding his employment, the department and program in which he worked, the termination, the appeal, his efforts to be relocated, the role of the Professional Standards and Responsibilities Committee, and the damages he experienced as a result of the termination.
3. Dr. Pravin Rodrigues. Plaintiff. May be contacted through counsel. Dr. Rodrigues will testify to the circumstances surrounding his employment, the department and program in which he worked, the termination, the appeal, his efforts to be relocated, the role of the Professional Standards and Responsibilities Committee, and the damages he experienced as a result of the termination.

4. Ms. Stephanie Sikora. Plaintiff. May be contacted through counsel. Professor Sikora will testify to the circumstances surrounding his employment, the department and program in which she worked, the termination, the appeal, his efforts to be relocated, the role of the Professional Standards and Responsibilities Committee, and the damages he experienced as a result of the termination.
5. Dr. Jeffrey Tiel. Plaintiff. May be contacted through counsel. Dr. Tiel will testify to the circumstances surrounding his employment, the department and program in which he worked, the termination, the appeal, his efforts to be relocated, the role of the Professional Standards and Responsibilities Committee, and the damages he experienced as a result of the termination.
6. Dr. Rachel Wlodarsky. Plaintiff. May be contacted through counsel. Dr. Wlodarsky will testify to the circumstances surrounding his employment, the department and program in which she worked, the termination, the appeal, his efforts to be relocated, the role of the Professional Standards and Responsibilities Committee, and the damages he experienced as a result of the termination.
7. Dr. William Crothers. Former Interim President of Ashland University. On Cross-Examination.
8. Dr. Carlos Campo. President of Ashland University. On Cross Examination.
9. Dr. Dawn Weber. Dean of the College of Arts and Sciences. On Cross Examination.
10. Thomas Whatman. Executive Board Member, Member of the Ad Hoc Committee, and Chair of the Academic Prioritization Committee. On Cross Examination.
11. David Busch. Board Member, Ad Hoc Committee Member, and Finance Committee Chair. On Cross Examination.
12. Joyce Lamb. President of the Board of Trustees and Chaired the Ad Hoc Committee denying the Plaintiffs' appeals. On Cross Examination.
13. Lisa Miller. Former President of the Board of Trustees (served during the Prioritization Process). On Cross Examination.
14. Linda Joyce Brown. Co-Chair of the Professional Standards and Responsibilities Committee. Dr. Brown is expected to testify to the appeal process that she administered and the workings and findings of the PSRC Committee.
15. Louis Mancha. Chair of the Philosophy and Computer Science Department. Dr. Mancha is expected to testify regarding the structure and offerings of the department and program he chairs and the selection process of choosing to terminate or "non-renew" Drs. Kerkez and Tiel.

16. Howard Walters. Full Professor of Education. Dr. Walters is expected to testify regarding the structure and offerings of the College of Education and the professional abilities of Dr. Wlodarsky as a Professor at Ashland University.
17. Brenda Rosler. Associate Professor of Education, Early Childhood Literacy. Dr. Rosler is expected to testify regarding the structure and offerings of the College of Education and the professional abilities of Dr. Wlodarsky as a Professor at Ashland University.
18. Matt Tullis. Associate Professor in the Department of Journalism and Digital Media. Dr. Tullis is expected to testify to the structure of the College of Arts and Sciences and the lack of reorganization or restructuring of the College and the departmental positions on the Prioritization Process.
19. Dorothy Stratton, Retired professor of Social Work, witness at Pravin Rodrgues' appeal. Ms. Stratton, Professor Emerita is expected to testify regarding Dr. Rodrigues role and capabilities at Ashland University, the appeal process, and more generally the Prioritization Process and the lack of restructuring in the academic programs and departments.
20. Daniel O'Rourke. Associate Professor of Communications. Dr. O'Rourke is expected to testify regarding the structure and offerings of the Department of Communications and the professional abilities of Dr. Rodrgues as a Professor at Ashland University.
21. Ronald Blackley. Professor of Music and Chair of the Department. Professor Blackley is expected to testify regarding the structure and offerings of the department and program he chairs and the selection process of choosing to terminate or "non-renew" Professor Sikora.
22. Marla Butke, Former Associate Professor of Music. Professor Butke is expected to testify regarding the structure and offerings of the Department of Music and the professional abilities of Professor Sikora as a Professor at Ashland University.
23. Leonard Salvo, Retired Professor of Music and Director of Bands, continues to be the director of the community band. Professor Salvo is expected to testify regarding the structure and offerings of the Department of Music and the professional abilities of Professor Sikora as a Professor at Ashland University.
24. Dr. Barbara Schmidt-Rinehardt, Professor of Foriegn Language. Dr. Schmidt-Rinhardt is expected to testify regarding the structure and offerings of the Department of Foreign Languages and the professional abilities of Dr. Cummins as a Professor at Ashland University.
25. John A. Sikora. Spouse of Dr. Sikora. Contact through Plaintiffs' counsel. Professor Sikora is expected to testify to the impact of the termination or "non-renewal" on Mrs.

Sikora and the damages she suffered.

26. Alyssa Ann Davis Guthrie. Spouse of Dr. Tiel. Contact through Plaintiffs' counsel. Ms. Guthrie will testify to the impact of the termination or "non-renewal" on Dr. Tiel and the damages he suffered.
27. Walter W. Wlodarsky. Spouse of Dr. Wlodarsky. Mr. Wlodarsky is expected to testify to the impact of the termination or "non-renewal" on Dr. Wlodarsky and the damages she suffered.
28. Aruna Fernandes Rodrigues. Spouse of Dr. Rodrigues. Mrs Rodrigues is expected to testify to the impact of the termination or "non-renewal" on Dr. Rodrigues and the damages he suffered.

The Plaintiffs reserve the right to call additional witnesses for impeachment purposes, rebuttal purposes and to call witnesses identified and called by Defendant.

VI. Exhibits

All of the below Exhibits have been produced in discovery. The Plaintiffs will work cooperatively with Defendant Ashland University to identify joint exhibits for the convenience of the parties and the Court.

Plaintiffs' 2015-2016 Faculty Contracts

Plaintiffs' 2016 Faculty Contract & Accompanying Contract Adjustment Letter

Faculty Rules and Regulations 2014-2015

Faculty Rules and Regulations 2015-2016

Plaintiffs' August 14, 2015 Notification of Non-renewal

Plaintiffs' Conference Requests

Article XII Written Summaries Provided to Plaintiffs

Plaintiffs' Appeal Requests

Plaintiffs' Appeal submissions

Professional Standards and Responsibilities Committee's Appeal Decisions

Board of Trustees Final Decision Notifications to Plaintiffs

Plaintiffs Tax Returns and related documents (filed under seal to protect privacy)

Plaintiffs' Curriculum Vitae

Plaintiffs' Job Applications and Related Correspondence

Plaintiffs' Interrogatory Responses

Plaintiffs' Damage Calculations (as illustrated in the Interrogatory responses)

Defendant's Interrogatory Responses

University's Conference Committee Guidelines

May 7, 2015 Board Minutes

May 8, 2015 Board Minutes

August 5, 2015 Board Minutes

March 19, 2016 Board Minutes

Letters from Campo to each of the Plaintiffs communicating the decision to deny appeal

Prioritizing Academic Programs and Services: Reallocating Resources to Achieve Strategic Balance. By: Robert C. Dickeson

Doug Fiore Letter to PSRC: Response to REquest for Evidence regarding Appeals under FRR XII, October 12, 2015

October 13, 2015 email from Ron Blackley to Douglas Fiore requesting documents from the Administration on behalf of the PSRC

October 13, 2015 email from Doug Fiore to PSRC chairs with subject PSRC document request

January 15, 2016 Letter to the Board of Trustees from Retired Faculty

October 13 and 14, 2015 email between Linda Joyce Brown and Doug Fiore
November 3, 2015 email from Doug Fiore to PSRC chairs

Attachments to November 3, 2015 email

Responses to PSRC

List of Faculty Non-Renewals

2014-2015 Faculty Welfare Committee Report and Administration Response

Memorandum on the Process of Appeals in Faculty Rules and Regulations--September 29, 2015

Note to Faculty from Fiore--May 1, 2015

October 28, 2015 email from Linda Joyce Brown to Dawn Weber

Ratio Analysis with Peers

Report to the Faculty Senate on the Status of Tenure at Ashland University--January 12, 2016

October 24, 2015 email from Linda Joyce Brown to Jeffrey Weidenhamer

October 9, 2015 Resolution of Faculty Senate

Ashland University's Course Catalogs for 2014 through the present

Academic Prioritization Subcommittee Final Report & Appendices

Departmental Self-Studies of Plaintiffs' Departments

Academic Prioritization Subcommittee Self Study & Rubric

Departmental Self Studies of Plaintiffs' Departments

Faculty Senate Budget Committee Minutes -- September 18, 2015

Plaintiffs reserve the right to enter additional exhibits for impeachment purposes, to enter exhibits identified or utilized by Defendant Ashland University, enter additional exhibits for rebuttal purposes, and to utilize deposition transcripts as needed for impeachment purposes.

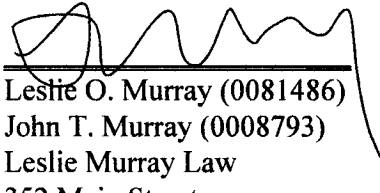
VII. Settlement

Plaintiffs are open to further settlement discussions. No settlement discussions have occurred since the summary judgment decision has been entered.

VIII. Estimate of Trial Time

Plaintiffs estimate the trial will require 6-8 days.

Respectfully submitted,



Leslie O. Murray (0081486)
John T. Murray (0008793)
Leslie Murray Law
352 Main Street
Huron, OH 44839
Telephone: 419-677-6689
Facsimile: 855-785-4894
Email: leslie@lesliemurraylaw.com
john@lesliemurraylaw.com

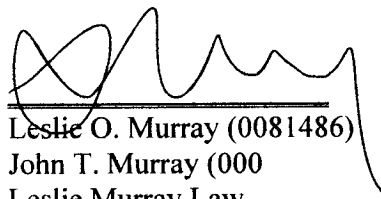
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on March 29, 2019, a copy of the foregoing Final Pretrial Statement was served by electronic mail to Defendant Ashland University through counsel:

William Nolan
Taylor Hunter
BARNES & THORNBURG LLP
bill.nolan@btlaw.com
taylor.hunter@btlaw.com

Respectfully submitted,



Leslie O. Murray (0081486)
John T. Murray (000)
Leslie Murray Law
352 Main Street
Huron, OH 44839
Telephone: 419-677-6689
Facsimile: 855-
Email: leslie@lesliemurraylaw.com
john@lesliemurraylaw.com

Attorneys for Plaintiffs